



The Homestead

December 2008

2008: Challenges and Successes!

By Pat Wheeler

Friends of Polk County incorporated in 1997 and has been striving to help the citizens of Polk County



protect our farm and forest land and to promote citizen involvement in land-use planning. We hope that you have noticed our increased level of activity over the last two years. Passage of Measure 37 and campaigning for Measure 49 focused a lot of local

attention on Oregon’s land-use system. Polk County was the only county in the Willamette Valley that did not provide Measure 37 claim data to the Department of Agriculture for their mapping project. During the “Yes on Measure 49” campaign we compiled data on all Polk County claims and prepared maps of claims for display at house parties and the Polk County Fair. We helped provide citizens of Polk County with up-to-date reports on claims and decisions and pending litigation. By working with non-profit legal centers, Crag Law Center and Goal One Coalition, we facilitated participation of concerned and adversely af-

ected citizens in local and state appeals of unsuitable developments in rural Polk County.

Highlights of our accomplishments for 2008 include:

- Publication of four issues of our newsletter Homestead
- Annual Meeting in March, Richard Whitman, DLCD, Guest Speaker
- Hosting a local Candidates Forum in September
- Hosting a presentation on “Peak Oil Supply” in October (see page 3)
- Reports on progress of the Big Look Task Force (see page 5)
- Reports on Measure 49 claims in Polk County (see page 2)
- Pursuit of M37/M49 legal issues on behalf of our membership (see page 7).

Thanks are due to our 2008 Officers and Board Members for many hours of effort gathering information, writing reports for the newsletters, participating in land use work shops and public hearings and other volunteer efforts. Help us continue this important work. Renew your membership today!

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2008 Officers and Board Members

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Processing Measure 49 Claims

The Department of Land Conservation and Development (DLCD) received 4,133 elections of the EXPRESS option (1-3 new dwelling sites) for processing Measure 37 claims under the Measure 49 process. The first preliminary decisions were posted in July and 358 preliminary decisions have been posted as of December 8, 2008. This is only 8% of the number of claims received. Progress has been slow but DLCD is building toward a level of at least 200 Measure 49 orders per month.

Polk County property owners submitted 204 Measure 49 claims for the EXPRESS option. As of December 8, DLCD issued 13 preliminary decisions for the Polk County claims. Collectively these claims comprise 645 acres of farm or forest land. Original Measure 37 claims for these properties proposed 178 new dwellings. Under the Measure 49 review 14 new dwellings have been tentatively

approved. DLCD denied five of the Polk County Measure 49 EXPRESS option claims. Reasons for denial include property located inside an Urban Growth Boundary, ownership changed in 1995, date of ownership of 1990, and submission of Measure 37 claims after December 4, 2006 without including required county documents. Four of the Polk County Measure 49 orders have been finalized and 5 new dwelling sites have been approved.

DLCD posts Measure 49 Preliminary Evaluations and Final Orders on their web page:

<http://www.oregon.gov/LCD/MEASURE49>.

A table of DLCD decisions for Polk County claims will be posted on our website:

<http://www.fopc-oregon.org> and will be updated monthly.

Preliminary M49 Decisions in Polk County				
<i>Owner</i>	<i>Address</i>	<i>Acres</i>	<i>Proposed M37 Dwellings</i>	<i>Granted M49 Dwellings</i>
Stuivenga	7330 Harmony Rd.	13	1	1
Cunningham	Ballston Rd.	28	5	3
Raffety	7205 Corvallis Rd.	12	1	1
Nisley	6800 Prather Rd.	62	3	2
Morey	8020 Harmony Rd.	43	4	1
Gross	703 Alan St.	67	67	0
Hass	2590 Kings Valley Hwy	29	4	2
Turner	21275 Savage Rd.	54	3	0
Brateng	2007 Holman Rd.	2	2	1
Seibert	16300 Falls City Rd.	77	17	0
Primus	550 Oak Grove Rd.	102	60	0
King	9730 Hultman Rd.	142	7	0
Schwanke	Helmick Rd.	14	64	3
<i>Final Decision Orders</i>				
Cunningham	Ballston Rd.	28	5	3
Raffety	7205 Corvallis Rd.	12	1	1
Stuivenga	7330 Harmony Rd.	13	1	1
Nisly	6800 Prather Rd.	62	3	2

Peak Oil Crisis Needs Our Attention Now

The October FoPC meeting was a presentation on the global energy outlook by John Kaufmann, Senior Policy Analyst at the Oregon Department of Energy, and lead staff for the Portland Peak Oil Task Force in 2006-2007. At the Department of Energy, his current responsibility is oil and gas supply issues. In his more than 25 years there, he has also been one of the nation's first state-level solar energy specialists, been recognized nationally for his work on solar orientation and solar rights ordinances for the metropolitan Portland area, and managed the Business & Residential Tax Credit and the Building Technologies programs.



John Kaufmann was the lead staffer for the groundbreaking Portland, Oregon Peak Oil Task Force (2006-2007), which looked at the implications of declining oil and gas supplies for the city.

To help us understand why we should pay attention to oil issues, Kaufmann reviewed worldwide petroleum supplies, demonstrating that while demand continues to grow rapidly, the worldwide supply cannot keep pace. More Americans are driving more miles in less efficient vehicles each year. In China, where the economy is growing rapidly, there was a 40% increase in oil imports in 2006, making it the world's second largest oil user.

And it's not just about transportation. A sample of what's made from oil: your sunglasses, printer's ink, probably your shoes, your telephone, your computer, paint, cosmetics, fertilizer, a surprising amount of food, most food packaging, the roads you drive on, insulation for your house, millions of chemicals, all synthetic fabrics, crayons, toys, and all things made of plastic. (www.oilcrisis.com)

World supply is not, and will not be, able to meet

the demand. In the U.S., our supplies have been jeopardized by Hurricane Katrina, the capacity of our refineries, Iraq's diminished production and uncertain conditions in Iran, Venezuela and Nigeria. Even without these concerns, there is not enough crude oil on the planet to feed demand at today's levels. Increased demand will only hasten the depletion of this finite resource.

"Oil is unique in that it is so strategic in nature. We are not talking about soapflakes or leisurewear here. Energy is truly fundamental to the world's economy. The Gulf War was a reflection of that reality." Dick Cheney - Halliburton, 1999

Energy affects everything: land use and transportation, the economy, public and social services, agriculture and food. As energy supplies fail to meet demand, oil prices rise. Fewer workers are able to afford the commute to work. Manufacturing and shipping costs rise. Employers lay off workers to cut costs. Food prices rise due to increased production and transportation costs. While demand for social services rises, government will have lower tax revenues.

Can we drill our way out of this problem? Kaufmann cited three approaches to estimating how much oil remains that could be produced. The most optimistic approach assumes that production and technology are driven by price; as long as there is increased demand, there will be increased production.

This conflicts sharply with historical and statistical trend analysis of geophysicists like M. King Hubbert, who in 1949 predicted that U.S. oil production would peak in 1971. His estimate of world oil reserves (2 trillion barrels) has been verified by field-by-field geologic analysis. With production declines already occurring in the world's existing oil fields, geologists predict peak world production within three years, if it hasn't already peaked. Factoring in any small new fields discovered and advanced recovery methods only nudges the peak ten to twenty years into the future.

There will be no discoveries of new large oil fields. We know the conditions that cause oil formation and with seismic imaging and computer mapping, we

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have very good information about where oil is to be found – in fewer places and in ever smaller quantities.

In the beginning of the petroleum industry, oil wells were under pressure great enough that when they were tapped, the crude oil would rise without pumping, making it cheap to extract in comparison with today's conditions. If we compare the energy returned on energy invested (EROEI) for all known energy options, it yields the following:

Energy Source	EROEI
Old Oil	100
Middle-East Oil	30
Natural Gas	20
Coal	10-20
Hydropower	10-40
Wind	5-10
Nuclear	5
Oil Sands	3
Biodiesel	3
Solar Photo-voltaic cells	1-5
Shale Oil	1.5
Ethanol	1.3

“So long as oil is used as a source of energy, when the energy cost of recovering a barrel of oil becomes greater than the energy content of the oil, production will cease no matter what the monetary price may be.” (<http://www.hubbertypeak.com/Hubbert/>)

To be sure, there will be economic opportunities in the demand for efficient products and services. Businesses and communities which are energy-efficient will have a competitive advantage. So, what about these other forms of energy? In the U.S., oil and natural gas supply 65% of our energy; coal, 23%; nuclear power, 8%; hydroelectric, 3%; and all others (solar, wind, geothermal, etc.), 1%. While we can, and will, increase our use of alternative sources, none of them can provide the amount of energy that oil does.

Coal supplies are limited and using them to replace oil would add dramatically to global warming. Replacing today's fossil fuels with nuclear power would require increasing the number of power plants from 116 to more than 1000, and uranium reserves would only last 10-20 years at that rate. Oil sands and oil shale are, in Kaufmann's words

“as energy rich as a potato”. Hydrogen takes more energy to produce than it yields, is bulky to transport and store, and would require an entirely new infrastructure. Biofuels, while carbon neutral, have a very low energy return on energy invested, and will provide only a small share of our fuel needs. Also, using biofuels may link the price of food to the price of fuel.

Wind is already delivering thousands of megawatts of power. While more wind and solar generation will help, both are more expensive and provide less concentrated energy than oil. Using either for transportation requires storing the energy generated in batteries. A ton of batteries holds about the same amount of energy as a gallon of gas.

Without large supplies of gasoline, diesel, natural gas and the hundreds of other petroleum products we've discussed, our lives will change significantly. There is much we can do to manage that change, rather than being its helpless victims. We can reinvestigate our rail systems to move people and products in a fuel-efficient manner. We can invest in transit alternatives such as streetcars, light rail, bicycles and trams. We can consume less. We can use less wasteful products (e.g., compact fluorescent light bulbs and local products in preference to those transported long distances). We can choose locally-owned businesses. We can expand energy-efficiency programs for new and existing buildings, both residential and commercial.

We can transform our cities and towns. We can make them pedestrian and bicycle friendly, with incentives for local businesses which feed the local economy rather than buy and spend where we cannot benefit. We can preserve our agricultural land and reinvestigate our local food-processing industry. As individuals, Kaufmann asks us to consume less of everything, develop internal sources of strength, build skills, get civically active, and spread the word.

We need to start now while we still have energy supplies to help make the transition. This change requires a massive effort, like that of the depression-era New Deal, the Marshall Plan, the Apollo Project, or World War II. It will take individual, business, local, state and federal solutions.

For further information: www.energybulletin.net, www.theoil drum.com, www.postcarboncities.net.

Land Use Reforms for 2009

After almost three years of review and discussion and two months of town hall meetings, the Big Look Task Force has released a draft legislative concept to be submitted for consideration by the 2009 Oregon State Legislature.

The proposed bill “Establishes four main principles for Oregon’s land-use program. Expands authorities and incentives for regional land-use planning. Authorizes regions to petition the Land Conservation and Development Commission to examine and revise criteria for farm and forest lands on a regional basis. Authorizes counties to designate other rural lands using new criteria, if they also identify significant natural areas and resources. Requires uses of other rural lands to be sustainable and compatible with urban areas. Establishes policy preferences for infrastructure funding and for future annexation of land added to urban growth boundaries. Directs the Land Conservation and Development Commission to establish a work group to carry out a policy-neutral review and audit of the land-use system to reduce complexity. Provides for a state strategic plan integrating land use, transportation and economic development priorities. Directs the development of performance measures for each statewide land-use goal, and a system for monitoring those measure over time...” The final wording for the proposed bill and other non-legislative recommendations will be determined at the December 9 meeting if the Task Force in Salem.

Your board members have followed the progress of the “Big Look Review” and we are disappointed. The task force findings indicate that Oregon’s current land-use laws have been very effective in preserving our farm and forest land. It is not clear that allowing regional definitions of farm land would achieve the same result. The Task Force also recommends that the Department of Land Conservation and Development play less of a regulatory

function and provide more policy recommendations for long-term land-use planning. A final weakness of the Big Look plan is lack of consideration of climate change and water issues. The Big Look was more of a “Narrow Look Back” than smart planning for generations of Oregonians to come. Oregon deserves better land-use plans, not diluted plans.

1000 Friends of Oregon state that the primary Task Force recommendation for new definitions of farm and forest land is deeply flawed:

“The Big Look Task Force opens the door to massive re-zoning of Oregon’s farm and forest lands, using regional definitions yet to be created. The proposal is a mistaken response to suspicions that significant amounts of land are incorrectly zoned for farming. The Task Force found no data to support this concern, yet leaped ahead to propose an entirely new system of farm and forest land protection. No effort has been made to estimate whether this system will protect farm and forest land as well as current law, even though the Task Force concluded that the existing tools have been effective for 35 years. This proposal will pull the rug out from under Oregon agriculture and will be costly and confusing. It will also lead to increased rural sprawl, which will in turn lead to increased driving and undermine our efforts to combat global warming. Past attempts to re-map Oregon’s agricultural lands have failed because Oregon’s agriculture thrives with a variety of growing conditions, soils, and climate that make every part of this state valuable for farming and ranching. The current land-use planning program – while we believe it could be stronger – recognizes this. We encourage you to write your legislators and ask them to oppose this Task Force proposal.”

We will continue to report on progress as these changes are reviewed by the 2009 Oregon Legislature.

Land use decisions at the local level: Are they always correct?

Only a few citizens know enough about county and state land use laws to question whether a local decision is actually in compliance with local and state land use laws. One way to determine if past local decisions are correct is to review the outcome of appeals of some of those decisions. Final local decisions can be appealed to the state Land Use Board of Appeals (LUBA). E.M. Easterly obtained the following information from the Polk County Planning Department.

Since 2004 there have been 21 LUBA actions related to Polk County. Of the 21 actions, LUBA decided seven in favor of Polk County, one resulted in reversal, and three were dismissed. LUBA remanded ten of the actions back to the county. Decisions are remanded to the local government when interpretations and findings used to support the local decisions are not sufficient to support the decision made.

What flaws were found in past Polk County decisions?

What was the ultimate outcome of the remanded decisions?

Does the > 50% remand/reversal rate in Polk County reflect badly on our local decision makers?

We will expand our reports on LUBA decisions to address these questions and more in future newsletters.

Pending Land Use Legislations in Polk County

Polk County's Planning Commission started meeting again after a six month hiatus. Their first work item was review of a proposal for the expansion of Independence's Urban Growth Boundary. Approximately 269 acres were requested for residential use, 44 acres for industrial use, and 41 acres for public airport use. The final public hearing will be held on December 18 at the Independence City Hall.

Austin McGuigan, Director of Polk County's Community Development and Planning Director reported the following legislative reviews to be considered by the Planning Commission and the Board of Commissioners during 2009:

Revision of Polk County's Transportation System Plan.

Review of Polk County's Citizen Involvement Program. The Planning Commission held several work sessions on this topic already and will be considering two proposals for the Citizen Involvement

Program. First, is the elimination of the seven Area Advisory Committees (AACs) that were re-instated in 1997 and consist of a citizen elected seven person Executive Committee that is annually "recognized" by the Board of Commissioners. The AACs would be replaced by a seven person Citizen Advisory Committee, with one member from each of Polk County's seven geographical areas appointed by the Board of Commissioners. Second, is a proposal for annual "registered" groups that receive pre-notices and have the opportunity to comment on land use applications before a decision is made by the Polk County Planning Department. No public hearings have been scheduled yet to review these two options.

Revision of the Subdivision and Partition Ordinance.

Revision of the Farm/Forest Zoning Ordinance.

We will report on further details for these legislative reviews and proposed revisions as they develop.

Legal Issues for 2008

Bundled Measure 37 Appeals

In response to Measure 37 claims and passage of Measure 49, FoPC has participated in a number of appeals and legal reviews. During 2007 we submitted four sets of bundled appeals to Circuit Court to oppose development of subdivisions in Exclusive Farm Zones. Together these claims amounted to 4027 acres and proposals for 839 new dwellings. These appeals were abated until the end of this calendar year, these bundled appeals will be transferred to the Court of Appeals pending clarification of the recent Jackson County decision by Federal Judge Panner (see below). Thanks to all the affected neighbors would contributed funds to help us pay the filing fees.

Vested-Rights Determinations

Crag Law Center, a non-profit legal firm has assisted FPC and several other local citizen groups in commenting, and when appropriate, appealing local decisions on vested-rights determinations for property owners to complete development based on Measure 37 claims. In November, we joined in supporting an amicus brief for a Court of Appeals review of a vested-rights approval for a subdivision development in Marion County. We expect to have two vested-rights determinations in Polk County. The Martinsons would like to finish phase one of the commercial development of 30 acres near Hwy 22 and Hwy 99. Their plans include a car dealership, farm equipment dealership and multiple other commercial outlets. The proposal was denied by the Polk County Planning Director, but a request to appeal was submitted by the applicant. A public hearing has not been scheduled yet. Wayne and Allen Simmons have submitted a vested-rights determination application for 20-37 new dwellings on 260 acres in the Eola Hills area. The application was deemed incomplete so no local decision was been made. We will continue reporting on progress of these claims in future newsletters.

Citizens for Constitutional Fairness vs. Jackson County

Attorneys for 25 Measure 37 claimants in Jackson County argued that Measure 37 waivers were binding contracts that could not be undone by Measure 49. The judge agreed. The ruling affects only Jackson County, but could set a precedent. The property owners also need authorization from DLCDC to proceed. The legal issue is not resolved, and will require a county-level case advancing to the Court of Appeals. Friends of Polk County is joining with Rogue Associates, Friends of Marion County, Oregon Shores Coalition, and Klamath Siskiyou Wildlands Center as intervenors on an appeal of Judge Panner's decision.

Measure 37/Measure 49

FoPC had several pending local appeals for land-use applications based on Measure 37 waivers. The claims are being processed under Measure 49 and we will continue to watch as these claims work their way through the system. To date the Measure 49 reviews by the Department of Land Conservation and Development seem very thorough. The State denied two Polk County Measure 49 claims because the property was acquired after the relevant land-use laws were passed. These dates of ownership issues were not recognized during the Polk County or State of Oregon review of the Measure 37 claims.



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Our Mission Statement

Who are the friends of Polk County, Oregon, and what is our purpose?

Mission: Friends of Polk County, Oregon, seeks to protect farm and forest lands which form the base of Polk County, to maintain the health and livability of our communities in the face of increasing population, and to preserve the quality of life we presently enjoy. Implementation:

These objectives will be achieved in part through involvement in the following activities:

- Preservation and enhancement of the statewide land use planning system by, for example, contact with individual legislators, testifying at committee hearings, and providing information to the media.
- Monitoring local land use decisions at the county and city level to ensure compliance with regulations and ordinances.
- Organizing opposition to proposals, regulations, and decisions not consistent with our objectives.

- Improvement and strengthening of local land use regulations through participation in citizen's advisory committees and planning commissions.
- Education of the public about land use issues and their importance to livability, the local farm and forest economy, and the cost and efficiency of local government, through media contact, work shops, and forums.

Winter Calendar

Dec 18 FoPC Board Meeting, 7 pm
Independence Public Library

Jan 15 FoPC Board Meeting, 7 pm
Independence Public Library

Feb 19 FoPC Board Meeting, 7 pm
Independence Public Library